



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

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AO-89-16

Amy Goldsmith
New England Director
Clean Water Action
New England Office
185 A South Street
Boston, MA 02111

Dear Ms. Goldsmith:

This letter is response to your request for an advisory opinion concerning the application of M.G.L. c.55 to the activities of a non-profit organization.

You have stated that Clean Water Action ("CWA") is a national, non-profit, 501(c)(4), citizens' organization that works on water and toxins issues. CWA is incorporated and registered with the Commonwealth of Massachusetts. CWA operates a door-to-door canvassing effort to educate and involve the general public in CWA's efforts to protect the environment and human health as well as raise funds in the form of contributions and memberships fees for CWA's programs. At the end of a discussion with an individual, a CWA paid staffer may inform the individual about an upcoming election or candidate. Depending on the particular election about which CWA is educating the public, the paid staffer may provide the individual at the door with literature or may solicit information from the individual to be included in a poll.

In connection with an upcoming special election, CWA is contemplating a voter education program. You have asked the following questions, for which we have provided answers, in the context of such contemplated actions. In analyzing these issues, we have assumed that CWA, as a 501(c)(4) entity, is a non-profit organization. If CWA is a for-profit organization or receives corporate monies the following advice would not be valid.

1. Are there restrictions on what activities can be conducted by the paid staff of CWA? Can CWA's paid staff inform the general public about a particular election and candidates(s) or can CWA only inform CWA members?

The campaign finance law defines a political committee

as "any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters." (Section 1 of M.G.L. c.55.)

It is the opinion of this office that if an organization solicits or receives any money or other thing of value for political purposes, the organization is functioning as a political committee, subject to the provision of M.G.L. c.55 as of the date of the solicitation or receipt of such money or other thing of value. Therefore, if CWA's paid staff are soliciting contributions for any candidate or political purpose, then CWA must organize as a political committee pursuant to M.G.L. c.55 prior to any solicitation.

If, however, CWA is only making expenditures for political purposes, i.e. paying staff to oppose or promote a candidate, a political party or a ballot question, CWA need not organize as a political committee. If such expenditures are made to oppose or promote a ballot question, CWA must report such expenditures pursuant to section 22 of M.G.L. c.55, however. If such expenditures are more than incidental and are made for the purpose of aiding, promoting or preventing the nomination or election of any person to public office or aiding or promoting or antagonizing the interest of any political party, such expenditures are also reportable by CWA (see enclosed Interpretative Bulletin 105, "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees," for a discussion of the determination of "incidental"). If the expenditures aid or prevent the nomination or election of a candidate or the interests of a political party, and are made with the knowledge of the candidate or the political party, such expenditures must be reported by the candidate or party, as direct or in-kind contributions. If such expenditures are not made at the direction of or in consultation with the candidate or party (so-called "independent expenditures") they must be reported pursuant to section 18A of M.G.L. c.55.

In determining the value of the services provided by CWA's paid staff, the actual cost of such services should be used, i.e. the hourly wage paid to such staffers as well as an hourly cost incurred by CWA in making such staff available.

If CWA's paid staff elects to conduct the canvassing efforts for the candidate, political party or ballot question on a volunteer basis, and CWA makes no other

expenditures (e.g. providing resources such as office equipment, supplies and the like), any benefit which accrues to the candidate, party or question is not reportable because so-called volunteer time is not considered a contribution under section 1 of M.G.L. c.55.

Massachusetts campaign finance law makes no distinction between the general public and an organization's members with respect to an organization's campaign finance activities.

2. If all of the monies raised by the paid staff of CWA are in the form of CWA memberships and contributions for CWA's programs, does any portion of the paid staff person's time used to provide general voter information need to be reported?

As discussed in the answer to Question 1 above, if CWA's paid staff person is promoting or preventing the nomination or election of a candidate, the interests of a political party or a ballot question, any expenditure incurred by CWA in connection with such promotion or prevention (i.e. the hourly wage of the staff person) is subject to M.G.L. c.55.

3. If CWA's paid staff is informing persons at the door about a particular candidate, does such action have to be reported on the candidate's campaign finance report as an in-kind contribution? Is there an overall limit on the in-kind contributions that may be provided to the candidate?

If the candidate for whom such action is undertaken cooperates in or consults on such action, the value of the services provided are reportable as in-kind contributions from CWA by the candidate. CWA is not required to report such contributions until the aggregate of all such expenditures on behalf of Massachusetts candidates, PAC's and political parties exceed in a calendar year either ten percent (10%) of CWA's gross revenues for the previous calendar year or \$15,000 whichever is less. (Please see enclosed Interpretative Bulletin 105, "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees," for additional information on this "incidental threshold".) Once the incidental threshold is reached, CWA would be restricted to the \$1,000 limitation on contributions to candidates, PAC's and political parties set forth in sections 6 and 7 of M.G.L. c.55.

We would alert you that any expenditures made for a ballot question are not included in the computation of the incidental threshold described in the previous paragraph, but are reportable separately by CWA as a non-profit corporation under section 22. Ballot question expenditures may be made without limitation.

4. Can CWA staff train volunteers to operate telephone banks, fund drives, voters ID's and "get out the vote" activities for particular candidate(s) while being paid by CWA or must they do it on a volunteer basis? Do paid staff of CWA need to keep timesheets or do any other reporting to document volunteer versus paid hours? If paid staff is allowed to conduct training sessions, does it need to be reported as an in-kind contribution on a particular candidate's campaign finance report? Is there a limit?

With respect to how paid time is accounted for if such time is a benefit to a particular candidate please see the answer to Question 1 above. Please also see the answer to Question 1 above for the treatment of volunteer time.

Under M.G.L. c.55, there is no specific requirement that a person maintain records of volunteer versus paid time. If a person is undertaking both paid and volunteer efforts on the part of a particular candidate or political purpose, this office suggests that such individual maintain a log or other time record to accurately reflect the differences, however, in order to substantiate any questions which may arise.

With respect to how paid staff time must be reported by a candidate, please see the answer to Question 1 above. The limits on such contributions by CWA are discussed in the answer to Question 3 above.

5. If funds of CWA are used to print general voter information (e.g. time and place of election), does that need to be reported under M.G.L. c.55? Is there a limit on such expenditures?

If the information provided by CWA in the general voter materials does not benefit any particular candidate, party, political committee or ballot question, the costs incurred in printing and distributing such material are not reportable under M.G.L. c.55. If there is a benefit however, such costs must be reported as described under the answer to Question 1, with the limits as described in the answer to Question 3.

6. If funds of CWA are used to print information about a particular candidate and his/her environmental record, does such expenditure need to be reported on the candidate's campaign finance report? May it be considered a miscellaneous expense of CWA's voter education program? If it must be reported, is there a limit on the amount that may be spent?

It is the opinion of this office that if CWA were to print special materials about one or more candidates and mail such materials to its members or to a larger audience,

the costs of such printing and mailing would be reportable by CWA, as described in the answer to Question 1 above, subject to the limitations described in the answer to Question 3 above. Such expenditures would be reportable by the candidate(s) as in-kind contributions only if the candidate(s) acted in concert with CWA; if not, such expenditures would be considered as independent expenditures.

The Attorney General has stated that "expenses incident to the publication of an internal newspaper which has editorialized in favor of a particular committee or candidate, urged that contributions be made to such a committee or candidate, or sold advertising space to a candidate or a multi-candidate committee" are permissible. See Opinion of the Attorney General, November 6, 1980.

It is the opinion of this office that if CWA were to print incidental information about a particular candidate and his/her environmental record in a periodic newsletter, or similar periodic mailing, of CWA to its members, any costs associated with printing and mailing such newsletter would not be reportable by CWA or the candidate.

7. Under what conditions would CWA have to form a political committee (PAC) in Massachusetts? Please provide details about what activities must be conducted by a political committee, reporting requirements, etc.

If CWA solicits or receives any money for a political purpose in Massachusetts it must register as a political committee. Because such a designation for an organization which functions largely in capacities other than as a political committee could have drastic effects (e.g. requiring CWA to disclose its entire membership list, subjecting its general treasury funds to forfeiture to the Local Aid Fund upon dissolution as a political committee, and the like), we would strongly urge CWA to establish a separate political committee prior to the time any political funds are solicited and/or received. If you decide to establish a political committee, we would be happy to assist you in the organization and reporting requirements. We have enclosed a guide, "For Committee Treasurers of 'Other Political Committees'/Multi-Candidate Committees ('PACs')", for your information.

8. Are there different rules, restrictions and/or requirements that CWA must follow if we are conducting a voter education program during a municipal versus a state election season? Is there a difference in the rules if CWA is conducting a voter education program for a primary versus a general election? In a federal election (congressional or presidential) does Massachusetts place any restrictions and/or requirements on organizations conducting voter

education projects beyond the federal election laws? What are the differences?

If the candidate, political committee or ballot questions CWA seeks to support is at the local level, all reporting must be done with the town or city clerk, although all of the requirements and limitations described in the answers to the questions above are still applicable. M.G.L. c.55 makes no distinction between the reporting requirements for a primary or a general election with the exception of the dates on which campaign finance reports are due with the appropriate official. The requirements of M.G.L. c.55 apply to state, county and municipal elections. Therefore, if CWA undertakes campaign finance activity designed to affect the outcome of a state, county or municipal election, then such activity is covered by M.G.L. c.55 whether or not such activity is carried out during a federal election. M.G.L. c.55 does not purport to reach campaign finance activity undertaken solely for the benefit of candidates for federal office.

This opinion has been rendered solely in the context of M.G.L. c.55 and solely on the basis of the representations made in your letter. We cannot comment on the differences between Massachusetts campaign finance law and the federal election law.

Should you have any additional questions, please do not hesitate to contact this office.

Very truly yours,



Mary F. McTigue
Director

MFM/wp
enclosure